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BEFORE THE ARIZONA CORPORATION COMMISSION

3052

**COMMISSIONERS**

JEFF HATCH-MILLER - Chairman 2:11 P 4:30  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF  
NORTHERN SUNRISE WATER COMPANY  
FOR A CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO PROVIDE WATER  
SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20453A-06-0247

IN THE MATTER OF THE APPLICATION OF  
SOUTHERN SUNRISE WATER COMPANY  
FOR A CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO PROVIDE WATER  
SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20454A-06-0248

IN THE MATTER OF THE JOINT  
APPLICATION OF NORTHERN SUNRISE  
WATER COMPANY AND SOUTHERN  
SUNRISE WATER COMPANY FOR THE  
APPROVAL OF SALE AND TRANSFER OF  
WATER UTILITY ASSETS, AND  
CANCELLATION OF CERTIFICATES OF  
CONVENIENCE AND NECESSITY, FOR  
MIRACLE VALLEY WATER COMPANY,  
COCHISE WATER COMPANY, HORSESHOE  
RANCH WATER COMPANY, CRYSTAL  
WATER COMPANY, MUSTANG WATER  
COMPANY, CORONADO ESTATES WATER  
COMPANY, AND SIERRA SUNSET WATER  
COMPANY, LOCATED IN COCHISE  
COUNTY, ARIZONA.

DOCKET NOS. W-20453A-06-0251  
W-20454A-06-0251  
W-01646A-06-0251  
W-01868A-06-0251  
W-02235A-06-0251  
W-02316A-06-0251  
W-02230A-06-0251  
W-01629A-06-0251  
W-02240A-06-0251

**STAFF RESPONSE TO  
APPLICANTS' JOINT LEGAL  
BRIEF ON COMMISSION  
AUTHORITY REGARDING  
CONDITIONAL OBLIGATION  
TO SERVE AND STAFF'S REPLY  
TO JOINT APPLICANTS'  
RESPONSE TO STAFF'S LATE  
FILED EXHIBIT 4**

At the conclusion of the hearing on this matter, at least two filing obligations were left to the Parties. First, Staff was to file Late Filed Exhibit 4. In addition, the Parties were directed to submit legal memoranda discussing the issue of whether the Commission has authority to grant Applicants a certificate of convenience and necessity ("CC&N"), with the requirement that before service could commence in a portion of the area, the developer provide a certificate of assured water supply from

1 the Arizona Department of Water Resources ("ADWR"). Staff subsequently submitted its Late Filed  
2 Exhibit 4, and on June 12, the Applicants submitted a response thereto. In addition, on June 7, 2006,  
3 Applicants submitted a joint legal brief as directed. This filing constitutes Staff's Reply to the Late  
4 Filed Exhibit, and Staff's Response to Applicants' Joint Legal Brief.

5       **I. Staff is willing to acquiesce to the allocation methodology proposed by**  
6       **Applicants' Late Filed Exhibit.**

7       Staff's Late Filed Exhibit 4 proposed to allocate "negative goodwill" by applying the  
8 adjustment solely to Land and Land Rights. The Applicants objected to that proposed treatment.  
9 Applicants contend that the existence of the "negative goodwill" in this matter is primarily related to  
10 the poor condition of the water facilities rather than the condition of the land. As a result, in their  
11 Late Filed Exhibit, Applicants submitted an allocation methodology that allocated the "negative  
12 goodwill" among the hard assets of the system, rather than applying it to the Land and Land Rights.

13       Upon further consideration, Staff has reconsidered our position regarding the allocation of  
14 "negative goodwill". The Parties to this proceeding have acknowledged that the inadequate water  
15 service is caused by poor physical infrastructure and deteriorated plant equipment, rather than  
16 inadequacy of land and land rights. Accordingly, Staff is willing to adopt the allocation of "negative  
17 goodwill" proposed in Applicants' Late Filed Exhibit A.

18       **II. The Commission has authority to grant a CC&N which conditions service within**  
19       **an area.**

20       Applicants' Joint Legal Brief on Commission Authority points out that the Commission has  
21 commonly granted CC&Ns with conditions that must be met before service can be extended within  
22 the CC&N area. Staff is in agreement that the Commission has authority to grant a CC&N with such  
23 conditions.

24       Under Article XV of the Arizona Constitution, the Commission has broad regulatory authority  
25 over public service corporations. In Staff's view, that authority would include the regulatory  
26 authority to require that certain conditions be met before a utility could serve customers within all or  
27 a part of a certificated area. This would apply either upon issuance of a CC&N or after. For  
28

1 example, even after a CC&N was issued, the Commission could impose a moratorium on new  
2 connections if circumstances dictated such an action.

3 Of course, there are two ways that the Commission can accomplish the objective of granting  
4 the CC&N while requiring a finding of an adequate water supply before the actual providing of  
5 service is permissible. One would be to grant a CC&N with the condition that service not be  
6 extended until the developer has provided a statement of assured water supply from ADWR. The  
7 other would be to grant an Order Preliminary for the area in question. The Order Preliminary  
8 approach is specifically recognized under A.R.S. § 40-282(D). If an Order preliminary were granted,  
9 the Commission would issue a CC&N as a ministerial act upon the Applicants' compliance with the  
10 requirements of the Order Preliminary. Staff believes that either approach is within the  
11 Commission's authority.

12 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of June, 2006.

13  
14 Christopher Kempley, by *Justice Alvarado*  
15 Christopher C. Kempley  
16 Chief Counsel, Legal Division  
17 Arizona Corporation Commission  
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(602) 542-3402

19 The original and thirteen (13) copies  
20 of the foregoing were filed this 21<sup>st</sup>  
day of June 2006 with:

21 Docket Control  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
Phoenix, Arizona 85007

24 Copies of the foregoing were mailed  
25 this 21<sup>st</sup> day of June 2006 to:

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Roseann Osorio